

In regard to claim 1, the rejection is improper because the Teodosiu reference is not prior art. More specifically, Teodosiu is a published U.S. patent application that was filed on Sep. 13, 2001, after Applicants' priority date of Jan. 22, 2001. Teodosiu does claim the benefit of two provisional applications both filed Nov. 22, 2000. However, the Nov. 22, 2000 filing date can only be used as Teodosiu's 35 U.S.C. § 103(a) prior art date for the subject matter that is common to both the published application and the provisional application. However, the material in Teodosiu relied upon by the Examiner is not actually present in either of Teodosiu's provisional applications. In fact, examination of Teodosiu's two provisional applications shows that they **vary greatly** from Teodosiu's published utility application. **The subject matter on which the Examiner is relying on to reject Applicants' claims is not present in one of Teodosiu's provisional applications.** Therefore, the rejection is improper. See, *In re Wertheim*, 209 USPQ 554 (CCPA 1981). In the Action mailed January 30, 2007, the Examiner simply copied large portions of Teodosiu's published utility application and of Teodosiu's provisional application number 60/252,685, and declared without any analysis "Teodosiu's provisional application teaches the portions that Examiner relied upon to reject applicant claimed invention...". Applicants respectfully assert that the Examiner's copying of portions of Teodosiu's published application and of provisional application 60/252,685 fails to meet the requirement that the Examiner show the subject matter on which the Examiner is relying on to reject Applicants' claims is also present in one of Teodosiu's provisional applications. The copying of entire portions of the applications and abovementioned conclusory declaration by the Examiner adds nothing new to the Examiner's previous assertions, and is thus not substantially responsive to the Applicants' arguments. In fact, reading the portions copied by the Examiner shows that much of the teachings used by the Examiner in the rejection are clearly not present in the provisional.

Specifically, the Examiner has not shown that every portion of Teodosiu relied upon by the Examiner to reject Applicants' claims is found in one of Teodosiu's provisional applications. For example, in the rejection of claims 1-6, 8-18, 21 and 23-40, the Examiner relies on the following paragraphs and figures of Teodosiu: [0016], [0030 - 0037], [0045], [0053], [0073], [0074], [0077], [0094 - 0097]. None of these paragraphs are found in either of Teodosiu's provisional applications. Since portions of Teodosiu relied upon by the Examiner to reject the claims are not common to both Teodosiu's published application and one of Teodosiu's provisional applications, the rejection is improper.

Teodosiu further fails to qualify as prior art because neither one of Teodosiu's provisional applications provide full 35 U.S.C. § 112 support for any of the claims of Teodosiu's published utility application. The earlier date of one of Teodosiu's provisional applications can only be used as the

prior art date if a claim of Teodosiu's published utility application is fully supported per 35 U.S.C. § 112 by one of Teodosiu's provisional applications. See, M.P.E.P. § 2136.03(IV). Such support is clearly lacking in Teodosiu's provisional applications. In response to this argument, the Examiner has stated that pages 3-4 of provisional application 60/252,658 teach the limitations of claim 1 of Teodosiu's published application. **However, a careful review of pages 3-4 of provisional application 60/252,658 fails to reveal that this portion of the provisional application satisfies the written description and enablement requirements of 35 U.S.C. § 112 for claim 1 of the published application.** For example, pages 3-4 do not describe the RNS server "receiving a peer resource request ... from a peer platform through a networking environment", or describe "generating a peer resource response based on the peer resource request", or describe "returning the peer resource response to the peer platform through the networking environment, said peer resource response to enable the peer platform to access a peer resource corresponding to the peer resource request within the networking environment." **Since the Examiner has not shown that Teodosiu's provisional application satisfies the written description and enablement requirements for any claim of the published application, the rejection is improper.** See, M.P.E.P. § 2136.03(IV).

Even if Teodosiu qualified as prior art, the Examiner has failed to state a *prima facie* rejection because the cited art fails to teach all limitations of Applicants' claimed invention. In further regard to claim 1, the Examiner admits that Teodosiu "fails to teach at least a subset of the peer nodes are configured to participate in a peer membership protocol for joining or forming a peer group with other peer nodes", and asserts that Badovinatz teaches "a membership protocol for adding nodes to become members of a domain in a distributed computing environment which inherently supports peer-to-peer computing." The Examiner goes on to state that it would have been obvious to "combine the teachings of Teodosiu and Badovinatz to allow peer nodes to use peer membership protocol for joining or forming a peer group with other peer nodes because it would manage membership of a domain of computers of a distributed computing environment." Since the Examiner admits that Teodosiu does not teach the subject functionality, it is incumbent upon the Examiner to "present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Int'f 1985). Badovinatz describes a mechanism for managing membership of a domain of processors in a distributed computing environment. Nowhere does the prior art "expressly or impliedly" suggest that this mechanism should or could be used in a peer computing system to enable peer nodes to participate in a peer membership protocol for joining or forming a peer group with other peer nodes. The Examiner states that it would have been obvious to combine Teodosiu's peer computing system with Badovinatz's

management of membership of a domain of processors for the advantage of “manag[ing] membership of a domain of computers of a distributed computing environment.” However, nowhere do Teodosiu or Badovinatz “expressly or impliedly” suggest that “manag[ing] membership of a domain of computers of a distributed computing environment” would result from applying Badovinatz’s teachings in a peer computing system or would be desirable in Teodosiu’s system. Furthermore, Badovinatz teaches a central server node as a mechanism for managing membership of a domain of processors in a distributed computing environment. By their very nature, peer computing systems typically seek to avoid a central server node. Thus, **Badovinatz actually teaches away from a peer-to-peer system.**

Furthermore, “Manag[ing] membership of a domain of computers of a distributed computing environment” is not commensurate with the suggested combination of Teodosiu’s “peer computing system” and Badovinatz’s mechanism. As Badovinatz teaches a mechanism that provides the cited advantage for processors in a distributed computing environment, the Examiner provides no valid reason to combine Teodosiu’s “peer computing system” and Badovinatz’s mechanism to obtain the cited advantage. In other words, the Examiner has only given a reason to use Badovinatz’s system alone, not a reason to modify Teodosiu’s system. The Examiner’s “line of reasoning” that combining Teodosiu’s “peer computing system” with Badovinatz’s mechanism is not a convincing line of reasoning as to why the claimed invention would have been obvious in light of the teachings of the references. The Examiner has asserted that the distributed computing environment of Badovinatz “inherently supports peer-to-peer computing.” As shown above, Badovinatz’s reliance on a central server node specifically teaches away from a peer-to-peer system. The Examiner has asserted that it would be obvious to combine the references “because it would manage membership of a domain of computers of a distributed computing environment”, citing col. 1, lines 5-8, of Badovinatz. However, this is simply a reason to use Badovinatz’s system alone, not a reason to modify Teodosiu.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 1 also apply to claims 5, 12, 13 and 18.

Furthermore, the Examiner has failed to even attempt to state a *prima facie* rejection for claims 12-14, 16-18, 21 and 23-40. The Examiner only states that these claims have similar limitations to claims 1-6 and 8-11 and are being rejected under the same rationale as claims 1-6 and 8-11. However, claims 12-14, 16-18, 21 and 23-40 have a different scope than claims 1-6 and 8-11. Since the Examiner has failed to address the differences between the claims, the Examiner’s rejection of claims 12-

14, 16-18, 21 and 23-40 is improper. Furthermore, the rejection of claims 12-14, 16-18, 21 and 23-40 is improper because the Teodosiu reference is not prior art, as noted above in reference to claim 1.

In the Advisory Action mailed April 10, 2007, in response to the Applicants' arguments traversing the rejections of claims 1-6, 8-18, 21 and 23-40 under 35 U.S.C. § 103(a), the Examiner asserted that the Applicants' arguments "are not deemed to be persuasive", and "In addition, office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure...Therefore, limitations that are argued by applicant but are not in claimed language are not being considered by Examiner." Since the Examiner has given no indication as to what "limitations...are argued by applicant but are not in claimed language", the Examiner's assertion is without merit. **The Examiner did not provide any substantive responses to the Applicants' arguments in the Advisory Action.**

Provisional Double Patenting Rejection:

The Examiner *provisionally* rejected claims 1-40 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of co-pending Application No. 10/055,649. Applicants traverse this rejection on the grounds that the Examiner has not stated a *prima facie* rejection for the reasons previously stated in the Response filed March 30, 2007.

In light of the foregoing remarks, Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested. If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5181-70400/RCK.

Also enclosed herewith are the following item: Notice of Appeal.

Respectfully submitted,

/Robert C. Kowert/

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